

EXHIBIT 7

164 FERC ¶ 62,158

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boyce Hydro Power, LLC

Project No. 10809-044,
10810-050,
10808-061, &
2785-095

ORDER AMENDING ORDER ON TEMPORARY
VARIANCE TO RESERVOIR ELEVATIONS

(Issued September 19, 2018)

1. On September 14, 2018, Commission staff issued an Order Modifying and Approving Temporary Variance to Reservoir Elevations concerning the Secord, Smallwood, Edenville, and Sanford Hydroelectric Projects, Nos. 10809, 10810, 10808, and 2785, respectively.¹ The projects are licensed to Boyce Hydro Power, LLC (Boyce Hydro or licensee). The projects are located on the Tittabawassee and Tobacco Rivers in Gladwin and Midland counties, Michigan. These projects do not occupy federal lands. This order revises the requirements of the September 14, 2018 order to include requirements specific to the Edenville Project necessary to accommodate inspections at the Smallwood Project, during the temporary variance period that is the subject of the September 14, 2018 order.

2. Boyce Hydro filed an application on July 26, 2018, for a temporary variance from the reservoir elevation requirements in the licenses of each of the four projects in order to perform spillway and gate inspections at each project. In its September 14, 2018 order, Commission staff modified and approved the licensee's request for temporary variances to reservoir elevation requirements at the Secord, Smallwood, and Sanford projects. However, the order stated that the licensee's request as it related to the Edenville Project would not be considered because the license for the Edenville Project is subject to the Commission's September 10, 2018 Order Revoking License, effective 15 days from the issuance date of the revocation order.²

¹ *Boyce Hydro Power, LLC*, 164 FERC ¶ 62,146 (2018) (September 2018 Temporary Variance).

² *Id.* at P 1; *see also Boyce Hydro Power, LLC*, 164 FERC ¶ 61,178, at P 60 and Ordering Para. A (2018) (Revocation Order).

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3. Boyce Hydro must lower Wixom Lake, the reservoir for the Edenville Project, in order to fully access the spillway at the Smallwood Project, which is located immediately upstream.³ In lowering the elevation of Wixom Lake, the licensee will necessarily deviate from the license conditions of the Edenville Project. The licensee would begin lowering the Edenville reservoir on September 20, 2018 at a rate of 8 inches per day and would refill the reservoir at the conclusion of spillway inspections at a rate not to exceed 9 inches per day. The licensee would lower the Edenville reservoir to an elevation of 671.8 ft. (-0.4/+0.3 ft.) (National Geodetic Vertical Datum). We therefore revise the September 14, 2018 order to include the Edenville Project so long as the license is effective.

4. On August 1 and 24, 2018, the Michigan Department of Natural Resources (Michigan DNR), an intervenor in this proceeding, recommended release of certain additional minimum flows at the projects during the drawdowns to minimize effects to downstream riverine habitat areas. This included release of a minimum flow of 30 cubic feet per second (cfs) at the Edenville Project's Tittabawassee spillway. The agency also recommended maintaining license-required minimum flow releases below the Tobacco spillway at the Edenville Project.⁴ Michigan DNR recommended that minimum flows be maintained at all times while the impoundments are below normal surface water elevations, except when staff are onsite conducting the spillway inspections.

5. To help protect riverine aquatic resources below the Edenville Project, we direct that, during the drawdown period, license-required flows be maintained below the Edenville Project's Tobacco spillway, and the additional 30-cfs minimum recommended by Michigan DNR be maintained below the Tittabawassee spillway. These flows may be modified or curtailed when necessary for safety and performance of the inspections at each dam, and they may be modified or curtailed as may be necessary to maintain the drawdown and refill rates and schedules approved in this order. The licensee should inform the Commission's Division of Dam Safety and Inspection's Chicago Regional Engineer, prior to initiation of the drawdowns, of the methods by which these flows will be provided.

6. As required by ordering paragraph (G) of the September 14, 2018 order, we require the licensee to immediately forward to the Michigan DNR any observations of

³ See September 2018 Temporary Variance, 164 FERC ¶ 62,146 at P 7 (noting that Boyce Hydro must lower the reservoir at Edenville Project so it can inspect the upstream Smallwood spillway).

⁴ Article 403 of the Edenville Project license requires a minimum flow of 66 cfs from April 1 through September 30 and a minimum flow of 40 cfs from October 1 through March 31.

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significant strandings, or reports it receives of significant strandings in the Edenville reservoir, so that appropriate action can be taken. The licensee must temporarily stop a drawdown if notified by the Michigan DNR of a stranding event that the agency believes could have significant, population-level effects. If the licensee is informed by the agency of such an event, it must also immediately inform the Commission, and identify any measures it proposes to take, in consultation with Michigan DNR, to address the situation.

7. As required by the September 14, 2018 order for the other three projects, we are similarly requiring the licensee, before starting the drawdown, to install temporary signs at the Edenville Project to further inform boaters of the drawdowns and possible shallow-water navigation hazards. Signage should be installed adjacent to the licensee's existing Part 8 sign, and remain in place throughout the drawdown period. The signage should include: (1) the schedule and target water elevations at the reservoir; (2) a warning that new shallow-water navigation hazards may be created; (3) the location of other nearby fishing and boating opportunities; and (4) a telephone number and email contact where further information can be obtained.

The Director orders:

(A) The September 14, 2018 Order Modifying and Approving Temporary Variances to Reservoir Elevations is amended to approve Boyce Hydro Power, LLC's (licensee) July 26, 2018 request for a temporary variance, as clarified on August 7, 2018, to lower the project reservoir at the Edenville Project No. 10808, as modified by ordering paragraphs (B) through (E) below.

(B) The licensee must start the drawdown of the Edenville reservoir no earlier than September 20, 2018.

(C) The licensee must maintain license required minimum flows at the Edenville Project required by Article 403. Throughout the drawdown at the Edenville Project, the licensee must maintain continuous minimum flows of 30 cubic feet per second below the Edenville dam at the Tittabawassee spillway when the drawdowns approved in this order result in cessations of all flows that would normally be provided to these areas during normal project operation. These flows may be modified or curtailed when necessary for safety and performance of the inspections at each dam, and they may be modified or curtailed as may be necessary to maintain the drawdown and refill rates and schedules approved in this order. The licensee must inform the Commission's Division of Dam Safety and Inspection's Chicago Regional Engineer, prior to initiation of the drawdowns, of the methods by which these flows will be provided.

(D) The licensee must immediately forward to the Michigan Department of Natural Resources (Michigan DNR) any observations of significant strandings, or reports

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it receives of significant strandings in the Edenville reservoir, so that appropriate action can be taken. The licensee must temporarily stop a drawdown if notified by the Michigan DNR of a stranding event that the agency believes could have significant, population-level effects. If the licensee is informed by the agency of such an event, it must also immediately inform the Commission, and identify any measures it proposes to take, in consultation with Michigan DNR, to address the situation.

(E) The licensee must, as soon as possible, and before initiating its drawdowns, install temporary signs to inform the public of the approved drawdown at the Edenville reservoir. Signs must be installed adjacent to the Part 8 signage at each project and must remain in place throughout the drawdown period. Each sign must include: (1) the schedule and target water elevations at each reservoir; (2) a warning that new shallow-water navigation hazards may be created; (3) the location of other nearby fishing and boating opportunities; and (4) a telephone number and email contact where further information can be obtained.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2017). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

CarLisa Linton
Acting Director
Division of Hydropower Administration
and Compliance

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